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No. 91-1016

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

INTERNATIONAL UNION,
UNITED MINE WORKERS OF AMERICA,
Petitioner,

v.

BIG HORN COAL COMPANY,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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PETITIONER'S REPLY BRIEF

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TABLE OF AUTHORITIES

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COMES NOW the International Union, United Mine Workers of America (hereinafter referred to as "Union" or "UMWA") and replies to Respondent Big Horn Coal Company's Brief in Opposition to the Petition for a Writ of Certiorari.

In its Brief in Opposition to the Petition for Certiorari (hereinafter referred to as "Opposition Brief"), Respondent attempts to distract the Court's attention from the genuine issue presented by the Writ: the Tenth Circuit's holding below is a product of a conflict among courts as to the reach of Section 301(a) of the Labor-Management Relations Act, 29 U.S.C. § 185(a), inconsistent with Section 301(a)'s reach as interpreted by this Court. Respondent chooses to argue the merits of questions not presented by this case, namely an employer's

right to unilaterally implement its final collective bargaining offer following impasse in negotiations, and whether an expired collective bargaining agreement is an enforceable contract.[1] Opposition Brief at pp. 2; 8-10. In between Respondent engages in a superficial discussion of Section 301(a) which suffers from the same flawed logic relied upon by the Tenth Circuit below. Opposition Brief at pp. 5-7. Neither the Tenth Circuit in its opinion nor Respondent in its Opposition Brief go further than the language of the Section 301 itself, which simply grants the courts jurisdiction over "suits for violation of contracts." 29 U.S.C. § 185(a). Respondent stops short of addressing the real and significant issue raised by the decision below: whether a case brought under section 301 must present a formal written contract to the court to invoke its jurisdiction.

In its attempt to dismiss the Petition as "beg(ging) a question", however, Respondent is compelled to acknowledge that "a 'formal contract' is not a prerequisite for jurisdiction under Section 301(a)." Opposition Brief at p. 6. In fact, "a collective bargaining agreement is not an ordinary contract", and the technical rules of the common law of contracts do not determine the existence of labor contracts. *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 550 (1964). "Reasoned flexibility in the application of contract law to the field of labor relations

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[1] Respondent, for example, seems to suggest that the Court's decision in *Litton Financial Printing v. NLRB*, 111 S. Ct. 2215 (1991) applies to this case and restricts the exercise of Section 301 jurisdiction. Opposition Brief at p. 7. Inasmuch as it arose under the National Labor Relations Act rather than Section 301, and as nowhere in the Petition does the Union argue that any term of the expired collective bargaining agreement between it and Respondent is enforceable against Respondent, *Litton* is inapposite. Directly on point, on the other hand, is this Court's unanimous 1990 decision in *Groves v. Ring Screw Works, Ferndale Fastener Div.*, 111 S. Ct. 498 (1990) which reaffirmed the "strong presumption" of access to the courts in order to resolve labor-management disputes underlying Section 301. *Id.* at 502-03.

is necessary to fully effectuate the policies underlying federal labor law." *Capitol Hustings Co. v. NLRB*, 671 F.2d 237, 242 (7th Cir. 1982). As shown in the Petition for Certiorari, this "reasoned flexibility" and the role of "judicial inventiveness", *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 457 (1957), in labor jurisprudence follows directly from the broad conception of Section 301 which *Lincoln Mills* and its progeny represent. The decision below, however, effectively undermines these concepts.

As shown in the Petition for Certiorari, the courts are divided as to whether they should refrain from exercising jurisdiction under Section 301(a) as in this case. *See*, e.g., *Kozera v. Westchester-Fairfield Elec. Contractors*, 909 F.2d 48, 52 (2nd Cir. 1990), *cert. denied*, 111 S. Ct. 956 (1991); *Intern. Bh'd. of Elec. Workers, Local 481 v. Sign-Craft, Inc.*, 864 F.2d 499, 501-502 (7th Cir. 1989); *Mack Trucks, Inc. v. Intern. Union, UAW*, 856 F.2d 579, 586-90 (3rd Cir. 1988), *cert. denied*, 489 U.S. 1054 (1989). The emerging consensus among the courts is that they do have jurisdiction pursuant to Section 301 to hear and decide questions as to the existence or validity of contracts. *See*, e.g., *Kozera*, 909 F.2d at 52 ("to determine whether a breach of agreement has occurred a court must necessarily determine whether a valid agreement exists . . ."); *Mack Trucks*, 856 F.2d at 590 ("§ 301(a) confers jurisdiction on a district court to determine the existence of a collective bargaining agreement"); *Rozay's Transfer v. Local Freight Drivers, Local 208*, 850 F.2d 1321, 1326 (9th Cir. 1988), *cert. denied*, 490 U.S. 1030 (1989) ("Section 301 . . . applies . . . to suits impugning the existence and validity of a labor agreement").

In the *United Food and Commercial Workers Intern. Union v. Gold Star Sausage Co.*, 897 F.2d 1022 (10th Cir. 1990), however, the Tenth Circuit rejected the union's argument that the employer "assumed the obligation to arbitrate when it implemented its (last contract) offer," finding that Section 301 "gives the court jurisdic-

tion over suits for violation of *contracts*" only. *Id.* at 1026 (emph. in orig.). Simply observing that because the employer's last offer is not a contract, the Tenth Circuit held that it was without jurisdiction to consider the merits, ignoring any argument that implementation of a contract offer may lead to enforceable contractual obligations. *Ibid.*[2] The Tenth Circuit's decision reversing the District Court herein tracks the language of *Gold Star Sausage* almost verbatim: "we determine that this Court is without jurisdiction to consider whether the disputes in this case should be referred to arbitration" (A. 6a).[3] This holding is in direct conflict with the scope of Section 301 as described in its legislative history, its interpretation by this Court, and the emerging consensus of the courts of appeal. *Kozera*, 909 F.2d at 52; *Mack Trucks*, 856 F.2d at 586-90. If the words of the Tenth Circuit are given effect, no court could exercise jurisdiction over a case seeking to enforce labor contracts other than formal, written agreements, leaving labor-management disputes unresolved and parties to them without further recourse. For that reason the Petition should be granted to resolve the conflict among the courts and vindicate the broad reach of Section 301.

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[2] In so doing the *Gold Star Sausage* panel ignored an earlier Tenth Circuit decision in *McNally Pittsburg, Inc. v. Intern. Ironworkers*, 812 F.2d 615 (10th Cir. 1987), choosing instead to rely on narrower authority explicitly rejected by both *McNally Pittsburg* and by the court which *Gold Star Sausage* purported to be following. *Compare Gold Star Sausage* and *McNally Pittsburg; Sign-Craft, Inc.*, 864 F.2d at 501-02. Other courts, meanwhile, have since adopted the reasoning of *McNally Pittsburg*. *See Kozera*, 909 F.2d at 52; *Mack Trucks*, 856 F.2d at 589.

[3] Reference is to the appendix ("A.") to the Petition for Certiorari and page number ("—a") thereof.

CONCLUSION

WHEREFORE, based on the above and foregoing, Petitioner International Union, United Mine Workers of America, respectfully submits that this case presents the Court with a substantial question of federal law about which the lower courts are in conflict, and that its petition should therefore be granted.

Respectfully submitted,

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